

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Piermont Fabrics, Inc.

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision
of a Determination or Refund of Corporation
Franchise Tax under Article 9A of the Tax Law
for the Fiscal Year Ended 6/30/81.

:

:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Piermont Fabrics, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Piermont Fabrics, Inc.
295 5th Ave.
New York, NY 10016

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
23rd day of May, 1985.

David Parchuck

Daniel A. Hagelund
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Piermont Fabrics, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law :
for the Fiscal Year Ended 6/30/81.

State of New York :
ss.:
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Walter J. Lambert, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter J. Lambert
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
23rd day of May, 1985.

David Parchuck

Annex P. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

May 23, 1985

Piermont Fabrics, Inc.
295 5th Ave.
New York, NY 10016

Gentlemen:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Walter J. Lambert
Ernst & Whinney
153 E. 53rd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PIERMONT FABRICS, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9A of the Tax Law for the Fiscal Year	:	
Ended June 30, 1981.	:	

Petitioner, Piermont Fabrics, Inc., 295 Fifth Avenue, New York, New York, 10016, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9A of the Tax Law for the fiscal year ended June 30, 1981 (File No. 44555).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 18, 1984 at 9:15 A.M. Petitioner appeared by Ernst & Whinney, CPA's (Walter J. Lambert, CPA). The Audit Division appeared by John P. Dugan, Esq. (Anna Colello, Esq., of counsel).

ISSUE

Whether petitioner's corporation franchise tax report for its fiscal year ended June 30, 1981 was timely filed on March 15, 1982, thus warranting cancellation of interest asserted as due based on untimely filing.

FINDINGS OF FACT

1. On May 26, 1982, the Audit Division issued to petitioner, Piermont Fabrics, Inc., a Notice and Demand for Payment of Corporation Tax Due asserting tax, penalty and interest due based upon the premise that petitioner's corporation

franchise tax report for the fiscal year ended June 30, 1981 had not been timely filed nor had its tax liability thereon been timely paid.

2. Tax due has been paid by petitioner and, as the result of a pre-hearing conference, penalty asserted as due has been cancelled, thus leaving only interest (from the asserted due date for filing to the date of payment of tax) at issue.

3. Petitioner is a wholly-owned subsidiary of Brucol Industries, Inc. ("Brucol"). Petitioner had, for periods preceding the one at issue, filed its U.S. Corporation Income Tax Returns and its New York State Corporation Franchise Tax Reports based on a fiscal year ending on February 28, including its return for the fiscal year ended February 28, 1981, which was filed on or about July 15, 1981.

4. Brucol files its U.S. Corporation Income Tax Return based on a fiscal year ending on June 30. Prior to the fiscal year ended June 30, 1981, Brucol and each of its affiliates, including petitioner, had filed separate tax returns.

5. On March 15, 1982, Brucol elected to file (by filing) its U.S. Corporation Income Tax Return for its fiscal year ended June 30, 1981, on a consolidated basis including petitioner and certain of its other affiliates. Pursuant to Treasury Regulations Section 1.1502-76, each of Brucol's subsidiaries included in such consolidated return, including petitioner, was required to adopt the same fiscal year as Brucol, specifically July 1 to June 30, commencing with the fiscal year ended June 30, 1981. Petitioner filed with the Internal Revenue Service an "Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return", as required, dated March 15, 1982, authorizing its inclusion on Brucol's consolidated return.

6. On March 15, 1982, petitioner filed an amended New York State Corporation Franchise Tax Report covering the period March 1, 1980 through June 30, 1980. This filing, covering the period not included in the (Federal) consolidated return (i.e. 3/1/80 - 6/30/80), was made in order to enable petitioner to report to New York State on the same fiscal year basis as the consolidated return to be filed with the Internal Revenue Service. (This amended return reflected an overpayment of \$3,408 which was to be applied to tax liability due for the next filing period; i.e. 7/1/80 - 6/30/81).

7. On March 15, 1982, petitioner also filed its New York State Corporation Franchise Tax Report for the fiscal year ended June 30, 1981.

8. The Audit Division asserts that petitioner's franchise tax report and payment of its tax liability for the fiscal year ended June 30, 1981 was due, unless petitioner had requested and been granted an extension, two and one-half months after such date; to wit, on September 15, 1981. Accordingly, the Audit Division maintains that filing and payment by petitioner on March 15, 1982 was not timely and that interest is properly due and owing.

9. Petitioner, by contrast, asserts that no return was due prior to the March 15, 1982 filing of the noted Federal consolidated return and thus its tax liability was timely paid, its return was timely filed, and no interest is due.

10. Petitioner did not seek any extensions for the filing of its franchise tax report for the fiscal year ended June 30, 1981.

CONCLUSIONS OF LAW

A. That Tax Law section 211.1 and 20 NYCRR 6-4.1(a)(2) requires, in the case of a corporate taxpayer utilizing a fiscal year accounting period, that a franchise tax report be filed within two and one half months after the close of

such corporate taxpayer's fiscal year. Said Tax Law section also provides as follows:

"[t]he tax commission may grant a reasonable extension of time for filing reports whenever good cause exists."

B. That where a taxpayer's accounting period for Federal income tax purposes is changed, that taxpayer must also change its accounting period and taxable year for New York State franchise tax purposes to coincide with the new Federal accounting period and taxable year (20 NYCRR 2-1.1 and 2-1.5).

C. That section 213 of the Tax Law provides, in relevant part, as follows:

"[t]o the extent the tax imposed...shall not have been previously paid

a. such tax, or the balance thereof, shall be payable to the tax commission in full at the time the report is required to be filed."

D. That Tax Law section 1084 provides, in relevant part, as follows:

"If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount...shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted."

E. That interest was properly asserted as due by the Audit Division. By consenting to its inclusion on Brucol's consolidated return, petitioner consented to a new fiscal year ending June 30, commencing with the fiscal year ended June 30, 1981. The due date for petitioner's tax report for such fiscal year thus became September 15, 1981. Since payment of tax due for such fiscal year was not made on the due date, the imposition of interest until the time of payment was proper. It is implausible that petitioner was unaware of the potential change by its parent to filing on a consolidated (Federal) basis, or of the change to its accounting year which would be occasioned thereby. Although not specified, it is presumed that petitioner and/or its parent derived some tax or other economic benefit by choosing to file on a consolidated

basis. Petitioner consented to inclusion on such consolidated return and thus must bear all of the consequences (benefits and burdens) flowing therefrom including, in this instance, the imposition of interest.


F. That the petition of Piermont Fabrics, Inc. is hereby denied and the Notice and Demand dated May 26, 1982, as modified to reflect only interest due for the period between due date (9/15/81) and filing date (3/15/82) is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985


PRESIDENT


COMMISSIONER


COMMISSIONER